

Subd. 2. OTHER INSURABLE INTERESTS. Subdivision 1 does not limit the right of a corporation or trustee to insure the life of an individual that is otherwise insurable under common law or any statute. This section shall not be interpreted as in any way modifying the common law doctrine of insurable interest, except as expressly provided in subdivision 1.

Sec. 3. [309.72] ACQUISITION OF INTERESTS IN INSURANCE.

An organization described in section 170(c) of the Internal Revenue Code of 1986, as amended through December 31, 1991, may purchase, accept, or otherwise acquire an interest in a life insurance policy as beneficiary or owner, as provided in section 61A.073.

Sec. 4. EFFECTIVE DATE.

Sections 1 and 3 are effective the day following final enactment and are intended to clarify and confirm the effect and intent of prior law. Section 2 is effective the day following final enactment.

Presented to the governor April 15, 1992

Signed by the governor April 17, 1992, 5:20 p.m.

CHAPTER 484—S.F.No. 1590

An act relating to unemployment compensation; making various technical and administrative changes; pertaining to treatment of American Indian tribal governments as employers for purposes of unemployment compensation insurance payments; amending Minnesota Statutes 1990, sections 268.04, subdivisions 18, 32, and 34; 268.06, subdivisions 18, 19, 22, and by adding a subdivision; 268.07, subdivision 3; 268.071, subdivision 6; 268.08, subdivision 1; 268.09, subdivisions 1 and 2; 268.10, subdivision 1; 268.161, subdivision 5; and 268.18, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1990, section 268.04, subdivision 18, is amended to read:

Subd. 18. "Interested party" includes the claimant, the claimant's base period employers, and most recent employer prior to the filing of a valid claim for benefits and registered successors to those employers as defined in section 268.06, subdivision 22.

Sec. 2. Minnesota Statutes 1990, section 268.04, subdivision 32, is amended to read:

Subd. 32. "Nonpublic school" means any school within the state, other than

New language is indicated by underline, deletions by ~~strikeout~~.

a public school, ~~wherein a resident of Minnesota may legally fulfill the compulsory school attendance requirements of section where an individual is provided instruction in compliance with sections 120.101 and 120.102,~~ or any school (1) which operates on a nonprofit basis, (2) which admits ~~only~~ prekindergarten children, (3) which has as its primary purpose the education of its students as determined by the commissioner of ~~human services pursuant to section 245A.03, clause (14),~~ and (4) which operates on a regular basis for at least eight months and no more than nine months a year.

Sec. 3. Minnesota Statutes 1990, section 268.04, subdivision 34, is amended to read:

Subd. 34. **CONTRIBUTION REPORT.** "Contribution report" means the summary report of wages paid and employment used to determine the amount of contributions due by employers on a calendar quarter basis. An auxiliary report of ~~wages paid and employment~~ broken down by business locations, when required by the commissioner, is part of the contribution report. The auxiliary report shall contain the number of employees for each month, and the quarterly total wages, excess wages, taxable wages, and tax for each location.

Sec. 4. Minnesota Statutes 1990, section 268.06, subdivision 18, is amended to read:

Subd. 18. **NOTICE TO EMPLOYER.** The commissioner shall ~~at least twice each year notify mail to the last known address of~~ each employer a quarterly notice of the benefits ~~as determined by the department~~ which have been charged to the employer's account ~~subsequent to the last notice, as determined by the department.~~ Unless reviewed in the manner hereinafter provided, charges set forth in such notice, or as modified by a redetermination, a decision of a referee, or the commissioner, shall be final and shall be used in determining the contribution rates for all years in which the charges occur within the employer's experience period and shall not be subject to collateral attack by way of review of a rate determination, application for adjustment or refund, or otherwise.

Sec. 5. Minnesota Statutes 1990, section 268.06, subdivision 19, is amended to read:

Subd. 19. **NOTICE OF RATE.** The commissioner shall mail to the last known address of each employer notice of the employer's contribution rate of contributions as determined for any calendar year pursuant to this section. Such notice shall contain the contribution rate, factors used in determining the individual employer's experience rating, and such other information as the commissioner may prescribe. Unless changed by the procedure provided in this subdivision, the assigned rate as initially determined or as changed by a redetermination by the tax branch of this department, a decision of a referee, or the commissioner shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was assigned, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise. If

New language is indicated by underline, deletions by ~~strikeout~~.

the legislature changes any of the factors used to determine the contribution rate of any employer for any year subsequent to the original mailing of such notice for the year, the earlier notice shall be void. The notice based on the new factors shall be deemed to be the only notice of rate of contributions for that year and shall be subject to the same finality, redetermination, and review procedures as provided above.

Sec. 6. Minnesota Statutes 1990, section 268.06, subdivision 22, is amended to read:

Subd. 22. **EMPLOYMENT EXPERIENCE RECORD TRANSFER.** (a) When an employing unit succeeds to or acquires the organization, trade or business or substantially all the assets of another employing unit which at the time of the acquisition was an employer subject to this law, and continues such organization, trade or business, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(b) When an employing unit succeeds to or acquires a distinct severable portion of the organization, trade, business, or assets which is less than substantially all of the employing enterprises of another employing unit, the successor employing unit shall acquire the experience rating record attributable to the portion to which it has succeeded, and the predecessor employing unit shall retain the experience rating record attributable to the portion which it has retained, if (1) the successor continues the organization, trade, or business of the portion acquired, (2) the successor makes a written request to file an application for the transfer of the experience rating record for the severable portion acquired from the predecessor (3) and within 90 days from the date the application is mailed to the last known address of the successor the successor and predecessor employing units jointly sign and file a properly completed, written application as prescribed by the commissioner that furnishes the commissioner with sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes. Previously assigned contribution rates that have become final in accordance with subdivision 19 prior to the filing of the written request to file an application shall not be affected by the transfer.

(c) Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(d) An official, designated by the commissioner, upon the official's own motion or upon application of an employing unit shall determine if an employing unit is a successor within the meaning of this subdivision and shall ~~notify~~ mail notice of such determination to the last known address of the employing unit ~~of the determination.~~ The determination shall be final unless a written appeal is filed by the employing unit ~~shall~~ within 30 days after mailing of the notice of determination ~~to the employing unit's last known address file a written~~

New language is indicated by underline, deletions by ~~strikeout~~.

appeal. Proceedings on the appeal shall be in accordance with section 268.12, subdivision 13.

(e) Notwithstanding subdivision 19, the commissioner may, as the result of any determination or decision regarding succession or nonsuccession, recompute the rate of all employers affected by the determination or decision for any year, including the year of the acquisition or succession and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record under this subdivision. This paragraph does not apply to rates that have become final in accordance with subdivision 19 prior to the filing of a written request to file an application for the transfer of a severable portion of the experience rating record as provided in paragraph (b).

Sec. 7. Minnesota Statutes 1990, section 268.06, is amended by adding a subdivision to read:

Subd. 34. INDIAN TRIBAL GOVERNMENTS; WHOLLY TRIBALLY-CONTROLLED SUBSIDIARIES AND SUBDIVISIONS. To the extent permissible under the laws of the United States, an Indian tribe defined in section 268.0111, subdivision 5a, and any wholly tribally-controlled subsidiaries and subdivisions shall, if elected by the tribe, be treated as a self-sustaining state and political subdivision employer for the purposes of subdivisions 25, 30, 31, and 33 or as a nonprofit corporation employer for purposes of subdivisions 28, 29, 30, and 33, or as an employer providing employment excluded under section 268.04, subdivision 12, clause (15). Any tribal election must be in writing to the commissioner and must be binding for a minimum of two years. To the extent permissible under the laws of the United States, a tribe may make separate elections for itself and each of its wholly tribally-controlled subsidiaries and subdivisions.

Sec. 8. Minnesota Statutes 1990, section 268.07, subdivision 3, is amended to read:

Subd. 3. WHEN WAGE CREDITS ARE NOT AVAILABLE. (1) To establish a second benefit year following the expiration of an immediately preceding benefit year, an individual must have sufficient wage credits and weeks of employment to establish a claim under the provisions of subdivision 2 and must have performed services after the establishment of the expired benefit year. The services performed must have been in insured work and the wages paid for those services must equal not less than ten times the weekly benefit amount of the second benefit year. A claim filed sufficiently in advance of anticipated unemployment to make the limitations of this clause ineffective shall be invalid. It is the purpose of this provision that an individual cannot establish more than one benefit year as a result of one separation from employment.

(2) No employer who provided 90 percent or more of the wage credits in a claimant's base period shall be charged for benefits based upon earnings of the claimant during a subsequent base period unless the employer has employed the claimant in any part of the subsequent base period.

New language is indicated by underline, deletions by ~~strikeout~~.

(3) Wages paid by an employing unit may not be used for benefit purposes by any claimant who (a) individually, jointly, or in combination with the claimant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employing unit; or (b) is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employing unit; and (c) is not permanently separated from employment.

This clause is effective when the individual has been paid four times the individual's weekly benefit amount in the current benefit year.

(4) Wages paid in seasonal employment, as defined in subdivision 2a, are not available for benefit purposes during weeks in which there is no seasonal employment available with the employer.

(5) No employer shall be charged for benefits if the employer is a base period employer on a second claim solely because of the transition from a base period consisting of the 52-week period preceding the claim date to a base period as defined in section 268.04, subdivision 2.

Sec. 9. Minnesota Statutes 1990, section 268.071, subdivision 6, is amended to read:

Subd. 6. **BEGINNING AND TERMINATION OF EXTENDED BENEFIT PERIOD.** (1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision 1, clause (4) shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

(3) Except as otherwise provided, the state share of the benefits paid to an individual under this section shall be charged to the employment experience record of the base period employer of the individual to the extent regular benefits were charged to the base period employer under sections 268.06, subdivision 5, and 268.09, subdivision 1, clause ~~(4)~~ (e).

(4) With respect to an employer which has elected to be a contributing employer under the provisions of section 268.06, subdivision 31, all benefits paid under this section which are based upon services for such contributing employer shall be charged to such contributing employer's account as to weeks of unemployment beginning after January 1, 1979.

Sec. 10. Minnesota Statutes 1990, section 268.08, subdivision 1, is amended to read:

Subdivision 1. **ELIGIBILITY CONDITIONS.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that the individual:

New language is indicated by underline, deletions by ~~strikeout~~.

(1) has registered for work at and thereafter has continued to report to an employment office, or agent of the office, in accordance with rules the commissioner may adopt; except that the commissioner may by rule waive or alter either or both of the requirements of this clause as to types of cases or situations with respect to which the commissioner finds that compliance with the requirements would be oppressive or would be inconsistent with the purposes of sections 268.03 to 268.231;

(2) has made a claim for benefits in accordance with rules as the commissioner may adopt;

(3) was able to work and was available for work, and was actively seeking work. The individual's weekly benefit amount shall be reduced one-fifth for each day the individual is unable to work or is unavailable for work. Benefits shall not be denied by application of this clause to an individual who is in training with the approval of the commissioner, is a dislocated worker as defined in section 268.975, subdivision 3, who is in training approved by the commissioner, or in training approved pursuant to section 236 of the Trade Act of 1974, as amended.

An individual is deemed unavailable for work with respect to any week which occurs in a period when the individual is a full-time student in attendance at, or on vacation from an established school, college, or university unless a majority of the ~~wage credits earned in the base period~~ individual's wages paid during the 52 weeks preceding the claim date were for services performed during weeks in which the student was attending school as a full-time student.

An individual serving as a juror shall be considered as available for work and actively seeking work on each day the individual is on jury duty; and

(4) has been unemployed for a waiting period of one week during which the individual is otherwise eligible for benefits under sections 268.03 to 268.231. However, payment for the waiting week, not to exceed \$20, shall be made to the individual after the individual has qualified for and been paid benefits for four weeks of unemployment in a benefit year which period of unemployment is terminated because of the individual's return to employment. No individual is required to serve a waiting period of more than one week within the one-year period subsequent to filing a valid claim and commencing with the week within which the valid claim was filed.

Sec. 11. Minnesota Statutes 1990, section 268.09, subdivision 1, is amended to read:

Subdivision 1. **DISQUALIFYING CONDITIONS.** An individual separated from any employment under paragraph (a), (b), or (d) shall be disqualified for waiting week credit and benefits. For separations under paragraphs (a) and (b), the disqualification shall continue until four calendar weeks have elapsed following the individual's separation and the individual has earned eight times the individual's weekly benefit amount in insured work.

New language is indicated by underline, deletions by ~~strikeout~~.

(a) **VOLUNTARY LEAVE.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this paragraph, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(b) **DISCHARGE FOR MISCONDUCT.** The individual was discharged for misconduct, not amounting to gross misconduct connected with work or for misconduct which interferes with and adversely affects employment.

(c) **EXCEPTIONS TO DISQUALIFICATION.** An individual shall not be disqualified under paragraphs (a) and (b) under any of the following conditions:

(1) the individual voluntarily discontinued employment to accept work employment offering substantially better conditions of ~~work~~ or substantially higher wages or both;

(2) the individual is separated from employment due to personal, serious illness provided that such individual has made reasonable efforts to retain employment.

An individual who is separated from employment due to the individual's illness of chemical dependency which has been professionally diagnosed or for which the individual has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment the individual knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain employment.

(3) the individual accepts work from a base period employer which involves a change in location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(4) the individual left employment because of reaching mandatory retirement age and was 65 years of age or older;

New language is indicated by underline, deletions by ~~strikeout~~.

(5) the individual is terminated by the employer because the individual gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which the individual receives the individual's normal wage or salary which is equal to or greater than the weekly benefit amount;

(6) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(7) the individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual;

(8) the individual is separated from employment based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual;

(9) except as provided in paragraph (d), separations from part-time employment will not be disqualifying when the claim is based on sufficient full-time employment to establish a valid claim from which the claimant has been separated for nondisqualifying reasons.

(d) DISCHARGE FOR GROSS MISCONDUCT. The individual was discharged for gross misconduct connected with work or gross misconduct which interferes with and adversely affects the individual's employment. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel all of the wage credits from the last employer from whom the individual was discharged for gross misconduct connected with work.

For the purpose of this paragraph "gross misconduct" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a health care facility, gross misconduct also includes misconduct involving an act of patient or resident abuse as defined in section 626.557, subdivision 2, clause (d).

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with the individual's work.

(e) LIMITED OR NO CHARGE OF BENEFITS. Benefits paid subsequent to an individual's separation under any of the foregoing paragraphs, excepting

New language is indicated by underline, deletions by ~~strikeout~~.

paragraphs (c)(3), (c)(5), and (c)(8), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure, without good cause, to accept an offer of suitable reemployment shall not be used as a factor in determining the future contribution rate of the employer whose offer of reemployment was not accepted or whose offer of reemployment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness, the individual's other employment at the time of the offer, or if the individual is in training with the approval of the commissioner.

(f) **ACTS OR OMISSIONS.** An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after separation from employment with the employer.

(g) **DISCIPLINARY SUSPENSIONS.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from the individual's own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

Sec. 12. Minnesota Statutes 1990, section 268.09, subdivision 2, is amended to read:

Subd. 2. **FAILURE TO APPLY FOR OR ACCEPT SUITABLE WORK OR REEMPLOYMENT.** An individual shall be disqualified for waiting week credit and benefits during the week of occurrence and until four calendar weeks have elapsed following the refusal or failure and the individual has earned eight times the individual's weekly benefit amount in insured work if the commissioner finds that the individual has failed, without good cause, either to apply for available, suitable work of which advised by the employment office, or the commissioner or to accept suitable work when offered, ~~or to return to customary self-employment (if any) when so directed by the commissioner,~~ or to accept a base period employer's offer of reemployment offering substantially the same or better hourly wages and conditions of work as were previously provided by that employer in the ~~base period~~ most recent period of employment.

(a) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to health, safety, and morals, physical fitness and prior training, experience, length of unemployment and prospects of securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence.

(b) Notwithstanding any other provisions of sections 268.03 to 268.231, no work shall be deemed suitable, and benefits shall not be denied thereunder to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

New language is indicated by underline, deletions by ~~strikeout~~.

(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) if as a condition of being employed the individual would be required to join a union or to resign from or refrain from joining any bona fide labor organization;

(4) if the individual is in training with the approval of the commissioner.

Sec. 13. Minnesota Statutes 1990, section 268.10, subdivision 1, is amended to read:

Subdivision 1. **FILING.** (a) Claims for benefits shall be made in accordance with such rules as the commissioner may prescribe. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in the employer's service and shall make available to each such individual at the time of becoming unemployed, a printed statement of such rules. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

(b) Any employer upon separation of an employee from employment for any reason which may result in disqualification for benefits under section 268.09, shall furnish to such employee a separation notice which shall provide the employer's name, address, and employer account number as registered with the department, the employee's name and social security account number, the inclusive dates of employment, and the reason for the separation. A copy of such separation notice shall be filed with the commissioner within seven days of such separation. The commissioner shall require each individual filing a claim for benefits to establish a benefit year to furnish the reason for separation from all employers in the individual's base period.

(c) For the purpose of complying with section 268.04, subdivision 2, the commissioner may require all base period employers to provide such information as the commissioner may prescribe, including, but not limited to, wages paid during any part of the base period, whether or not such information was previously provided.

(d) Upon establishment of a benefit year, the commissioner shall give notice to the last employer for whom the individual worked and all base period employers and registered successors to those employers as defined in section 268.06, subdivision 22. The employer so notified shall have seven days after the mailing of the notice to file a protest to monetary entitlement or a protest raising an issue of ineligibility or disqualification.

(e) If, upon review of the wage information on file with the department, it is

New language is indicated by underline, deletions by ~~strikeout~~.

found that an employer failed to provide wage information for the claimant, the commissioner shall accept a claimant certification as to the wage credits earned, based upon the claimant's records, and issue a monetary determination of validity certification. This determination may be modified based upon corrected information subsequently received from the employer or other sources. The employer who failed to report the individual's wages or filed an erroneous report may be penalized in accordance with section 268.16 or 268.18. In the absence of fraud, if a redetermination of validity of claim based on an employer's late corrected or erroneous report subsequently cancels or reduces the amount of benefits to which a claimant was entitled under the initial determination, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination; and

(f) The commissioner shall determine any issue raised under paragraph (d) or by an employer's late report. If an employer fails to file a separation notice within the time limits prescribed in paragraph (b), any relief from benefit charges provided by section 268.09, subdivision 1, paragraph (e), shall apply to weeks of unemployment beginning after the filing of the late report or protest.

Sec. 14. Minnesota Statutes 1990, section 268.161, subdivision 5, is amended to read:

Subd. 5. **RIGHT OF SETOFF.** Upon certification by the commissioner to the commissioner of finance or to any state agency which disburses its own funds, that an employer has an uncontested delinquent contribution or reimbursement liability owed to the department, and that the state has purchased personal services, supplies, contract services, or property from said employer, the commissioner of finance or the state agency shall apply to the delinquent contribution or reimbursement liability funds sufficient to satisfy the unpaid liability from funds appropriated for payment of said obligation of the state or any of its agencies that are due and owing the employer. The credit shall not be made against any funds exempt under section 550.37 or those funds owed an individual employer who receives assistance under chapter 256.

All funds, whether general or dedicated, shall be subject to setoff in the manner provided in this subdivision. Transfer of funds in payment of the obligations of the state or any of its agencies to an employer and any actions for the funds shall be had against the commissioner on the issue of the contribution or reimbursement liability. Nothing in this section shall be construed to limit the previously existing right of the state or any of its agencies to setoff.

Notwithstanding any law to the contrary, the commissioner shall have first priority to setoff funds owed by the department to a delinquent employer.

Sec. 15. Minnesota Statutes 1990, section 268.18, subdivision 1, is amended to read:

Subdivision 1. **ERRONEOUS PAYMENTS.** (a) Any claimant for benefits who, by reason of the claimant's own mistake or through the error of any indi-

New language is indicated by underline, deletions by ~~strikeout~~.

vidual engaged in the administration of sections 268.03 to 268.231 or because of a determination or redetermination issued pursuant to section 268.10, subdivision 2, has received any sum as benefits to which the claimant was not entitled under these sections, shall promptly return ~~such those~~ benefits in cash to the nearest office of the Minnesota department of jobs and training. If ~~such the~~ claimant fails to return ~~such the~~ benefits, the department of jobs and training shall, as soon as it discovers ~~such the~~ erroneous payment, determine the amount thereof due and notify ~~said the~~ individual to return ~~the same it~~.

(b) Unless the claimant files a written appeal with the department of jobs and training within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. If the claimant files an appeal with the department in writing within the time ~~aforsaid above~~ the matter shall be set for hearing before a referee of the department and heard as other benefit matters are heard in accordance with section 268.10 with the same rights of review as outlined for benefit cases in that section.

(c) The commissioner of the department of jobs and training is hereby authorized to deduct from any future benefits payable to the claimant under these sections in either the current or any subsequent benefit year an amount equivalent to the overpayment determined, except that no single deduction shall exceed 50 percent of the amount of the payment from which the deduction is made, or the overpayment may be collected the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to error and that state certifies to the department the facts involved and that the individual is liable under its law to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state, except that no single deduction shall exceed 50 percent of the amount of the payment from which the deduction is made. Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

(d) Notwithstanding paragraph (a), the commissioner shall waive recovery of an overpayment if a referee or the commissioner's representative determines the overpayment resulted from an administrative failure to identify that a claimant's wage credits were not earned in covered employment.

Sec. 16. RED LAKE BAND; TEMPORARY UNEMPLOYMENT INSURANCE RATE; ABATEMENT OF PENALTY, INTEREST, AND COSTS.

To the extent permissible under the laws of the United States, and notwithstanding Minnesota Statutes, section 268.06, subdivisions 2 and 3a, the commissioner of the department of jobs and training shall enter into a compromise agreement with the governing body of the Red Lake Band of Chippewa Indians.

New language is indicated by underline, deletions by ~~strikeout~~.

The agreement shall retroactively establish and apply a zero-percentage contribution rate for each quarter of the years 1988, 1989, 1990, 1991, 1992, and 1993, when no benefits under sections 268.001 to 268.25, were paid by the state on account of employment by the tribe or by any of its wholly tribally-controlled subsidiaries or subdivisions. The agreement shall abate any amounts owed and relieve the tribe and its subsidiaries or subdivisions of all liability for amounts otherwise payable by the tribe or its subsidiaries or subdivisions for the period, including but not limited to, delinquent contributions, reimbursements, interest, penalties, and costs. This section does not apply to any wholly tribally-controlled entity or subsidiary that elected coverage under Minnesota Statutes, chapter 268 prior to the day following final enactment.

Sec. 17. **LEGISLATIVE INTENT.**

The legislature intends that sections 7 and 16 be interpreted and applied to assist the Red Lake Band of Chippewa Indians in complying with federal and state unemployment laws in a manner that does not lead to a determination by the United States Department of Labor that sections 7 and 16 are out of conformity with federal unemployment law. In enacting section 7, the legislature does not intend to suggest that Indian tribes should be permitted to choose governmental or nonprofit status or to make that status available for employment that is not appropriate for governmental or nonprofit treatment, rather, the legislature intends to accommodate in state law the status and treatment that may be allowed under federal law.

Sec. 18. **SUNSET.**

Section 16 expires August 1, 1995.

Sec. 19. **EFFECTIVE DATE.**

Sections 1 through 6 and 8 through 14 take effect the day following final enactment. Section 15 is effective the day following final enactment and applies to recovery of overpayments pending on or after that date. Sections 7 and 16 take effect August 1, 1993.

Presented to the governor April 16, 1992

Signed by the governor April 20, 1992, 6:01 p.m.

CHAPTER 485—S.F.No. 979

An act relating to crimes; providing that it is a misdemeanor to sell a toxic substance containing butane to a minor; moving certain misdemeanor provisions to the criminal code; amending Minnesota Statutes 1990, section 145.406; proposing coding for new law in Minnesota Statutes, chapter 609; repealing Minnesota Statutes 1990, sections 145.38; 145.385; 145.39; and 145.40.

New language is indicated by underline, deletions by ~~strikeout~~.